



## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Notice of Issuance of Final Determination Concerning**

#### **Axion Series Led Video Display Cabinets**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of Axion series LED video display cabinets. Based upon the facts presented, CBP has concluded in the final determination that Taiwan is the country of origin of the Axion series LED video display cabinets for purposes of U.S. Government procurement.

**DATE:** The final determination was issued on April 19, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202-325-0046).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on April 19, 2018, CBP issued a final determination concerning the country of origin of Axion series LED video display cabinets which may be offered to the United States Government under an undesignated government procurement contract. This final determination, HQ H292849, was issued at the request of Vanguard LED Displays, Inc., under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade

Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP has concluded that, based upon the facts presented, the assembly of imported components does not substantially transform the components into a product of the United States, and therefore, the assembled Axion series LED video display cabinets derive their origin from the imported components, nearly all of which originate in Taiwan. Therefore, Taiwan is the country of origin of the Axion series LED video display cabinets for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR § 177.30), provides that any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: April 19, 2018

Alice A. Kipel, Executive Director  
Regulations and Rulings  
Office of Trade

HQ H292849

April 19, 2018

OT:RR:CTF:VS H292849 CMR

CATEGORY: Origin

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RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); subpart B, Part 177, CBP Regulations; Light Emitting Diode video display cabinets

Dear Mr. Murray:

This is in response to your request of December 15, 2017, on behalf of your client, Vanguard LED Displays, Inc. (hereinafter, Vanguard), requesting a final determination concerning Light Emitting Diode (LED) video display cabinets for purposes of government procurement under Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.). Vanguard is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and (d)(2), and is entitled to request this final determination under 19 C.F.R. § 177.23(a) and (b).

#### FACTS:

Vanguard seeks a country of origin determination regarding its Axion series LED video display cabinets, model numbers P1 through P2.5. The video display cabinets are of a uniform size, 640 mm by 360 mm. There are 11 different models offering different degrees of “pixel pitch.” This request is limited to the first nine models in the series, *i.e.*, P1, P1.2, P1.3, P1.4, P1.5, P1.6, P1.8, P2, P2.5.

You explain that:

The Axion series LED video display cabinets receive electronic signals and convert those signals into images that are displayed via the LEDs on the face of the cabinet. They are used by customers to display video images. The Axion series LED video cabinets can be used on a stand-alone basis, but are more commonly attached to other cabinets to create a much larger video screen, such as for the presentation of video images to large audiences.

Vanguard manufactures, sells and distributes LED video display cabinets for both indoor and outdoor use. With regard to the Axion series LED video display cabinets at issue, Vanguard imports the components of the video display cabinets and assembles the cabinets from the imported components at their facility in Lakeland, Florida. You indicate that the components of the Axion series LED video display cabinets (some of which are imported with pre-packaged screws for use in assembling the components to the display cabinet) are:

LED Modules – Manufactured in Taiwan. Each cabinet includes eight LED modules. Each LED module is composed of two subcomponents - LEDs and LED display drivers. These subcomponents are manufactured in Taiwan. The quantity of LEDs and LED display drivers in each LED module depends upon the desired pixel pitch of the video display.

Receiving Card – Manufactured in China.

Printed Circuit Board (PCB) – Manufactured in Taiwan.

Hub Card – Manufactured in Taiwan.

Power Supply – Manufactured in Taiwan.

Cabinet – Manufactured in China.

You indicate that the LED modules are specifically designed to be used in a particular LED video display, based upon the desired pixel pitch and the size of the cabinet, as ordered by a customer. The PCB is custom-made to meet the criteria specifically requested. While a particular PCB board could theoretically be used in another LED video display, it could not be used in other types of LED goods. The hub card is designed to specifically handle the particular receiving card designed to be used in the specific LED video display as ordered by the customer. In theory, it could be used in a different LED video display, but it could not be used in other types of LED goods. Similarly, the receiving card, power supply, and cabinet can be used in other LED video displays, but cannot be used in other types of LED goods.

You state that the LEDs constitute the majority of the component costs of the video display cabinets. You describe the function of the LEDs as “a type of semiconductor that conveys electronic signals into infrared-rays or light.” The LED display driver is described as “an integrated circuit that provides the circuitry necessary to interface most common microprocessors or digital systems to an LED display. [It] is an electrical device that regulates the power to an LED or a string (or strings) of LEDs.” The receiving card “reads the program commands from the sending card or the computer transmitting the signals regulating the brightness/chromaticity of the LEDs.” The PCB “mechanically and electrically connects electronic components.” Vanguard receives the PCB with the hub card integrated onto the PCB. The hub card “sends power to the LED modules, as well as instructions/information from the receiving card. The LED modules and the receiving card are attached to the PCB by Vanguard. The power supply component receives electrical power from an external source and provides power to the electrical components of the LED video cabinet. Finally, the cabinet, a die-cast aluminum cabinet, provides the structure into which the other components are installed to create a video display cabinet.

You describe the assembly process in the United States as follows:

1. Attaching and affixing (via screws) the power cable to the cabinet frame.

2. Affixing the power supply to its mount via screws and connecting the power cable to the power supply's adapter.
3. Placing the integrated PCB/hub card assembly on top of the previously attached components, centered in the cabinet, and affixing the PCB/hub card assembly (via screws) to the power supply.
4. Affixing the integrated PCB/hub assembly (via screws) to the cabinet.
5. Affixing the receiving card to the integrated PCB/hub card assembly via a notch in the hub card. (The hub card . . . has a notch into which the receiving card is to be installed.)
6. Installing each of the eight magnetized LED modules into the cabinet by attaching them to their respective data/power slots in the integrated PCB/hub card assembly.

After the video display cabinets are assembled, Vanguard tests them to ensure they function properly. Then, the video display cabinets are packaged for shipment to customers. You indicate that the processing in the United States, including the assembly, testing, and packaging generally requires no more than a day to complete, with the testing and packaging taking more time than the assembly.

You submit that the manufacturing processes which occur in Taiwan to create the Taiwanese components of the video display cabinet are more complex than the assembly process which occurs in the United States or the manufacturing processes which occur in China to create the two components of Chinese origin utilized in the assembly of the finished video display cabinets. In addition, you indicate that the collective value of the Taiwanese-manufactured components is overwhelmingly the majority of the component costs of the completed video display cabinets. Thus, you submit that the country of origin of the finished video display cabinets is Taiwan.

#### ISSUE:

What is the country of origin of the Axion series LED video display cabinets described herein for U.S. government procurement purposes?

#### LAW AND ANALYSIS:

U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which

implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. §§ 2511-2518).

The rule of origin set forth in 19 U.S.C. § 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See *also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The regulations define a "designated country end product" as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A "WTO GPA country end product" is defined as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 C.F.R. § 25.003.

Taiwan is a WTO GPA country; China is not.

In the Court of International Trade's decision in *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the court interpreted the meaning of "substantial transformation" as used in the Trade Agreements Act of 1979 for purposes of government procurement. *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight, under the TAA. Other than a white LED and a hydrogen getter, all of the components of the Generation II flashlight were of Chinese origin. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the "name, character and use" test in determining whether a substantial transformation had occurred, and reviewed various court decisions involving substantial transformation determinations. The court noted, citing *Uniroyal, Inc. v. United States*, 3 CIT 220, 226, 542 F. Supp. 1026, 1031, *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), that when "the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change." *Energizer* at 1318. In addition, the court noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 CIT 308, 310, *aff'd* 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, *i.e.*, whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

In reaching its decision in *Energizer*, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found "[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly." The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that Energizer's imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

The production process of the Axion series LED video display cabinets is similar to that of the Generation II flashlight in *Energizer*. All but two components are sourced from Taiwan. The post-importation assembly process involves manual assembly of components that are dedicated for use as components of the LED video display cabinets. The individual components do not lose their separate identities as a result of

the assembly process and do not undergo a change in their pre-determined uses. The assembly process, while more time consuming than that in *Energizer*, is not sufficiently complex as to amount to a substantial transformation of the imported components. Considering the totality of the information provided to CBP, and relying upon the court's application of substantial transformation in *Energizer*, we find that the country of origin of the assembled Axion series LED video display cabinets, produced as described herein, is Taiwan.

HOLDING:

Based on the information provided, and the analysis set forth above, the imported components of the Axion series LED video display cabinets are not substantially transformed as a result of their assembly in the United States. Therefore, the country of origin of the assembled Axion series LED video display cabinets at issue, is Taiwan, the country where all of the components of the Axion series LED video display cabinets, except two, are made.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director  
Regulations and Rulings  
Office of Trade